

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15<sup>th</sup> day of February, two thousand twelve.

PRESENT:

PIERRE N. LEVAL,  
JOSÉ A. CABRANES,  
RAYMOND J. LOHIER, JR.,  
*Circuit Judges.*

SHAHBAB QURESHI,  
*Petitioner,*

v.

ERIC H. HOLDER, JR., UNITED STATES  
ATTORNEY GENERAL,  
*Respondent.*

10-3988-ag  
NAC

FOR PETITIONER: Amy Nussbaum Gell, Gell & Gell, New York, New York.

FOR RESPONDENT: Tony West, Assistant Attorney General;  
Blair O'Connor, Assistant Director;  
Briena L. Strippoli, Trial Attorney,  
Office of Immigration Litigation,  
United States Department of Justice,  
Washington, D.C.

1           UPON DUE CONSIDERATION of this petition for review of a  
2 Board of Immigration Appeals ("BIA") decision, it is hereby  
3 ORDERED, ADJUDGED, AND DECREED, that the petition for review  
4 is DENIED.

5           Petitioner Shahbab Qureshi, a native and citizen of  
6 Pakistan, seeks review of a September 14, 2010, decision of  
7 the BIA affirming the April 13, 2010, decision of an  
8 Immigration Judge ("IJ") denying his application for asylum,  
9 withholding of removal and relief under the Convention Against  
10 Torture ("CAT"). *In re Shahbab Qureshi*, No. A056 073 070  
11 (B.I.A. Sept. 14, 2010), aff'g No. A056 073 070 (Immig. Ct.  
12 N.Y. City Apr. 13, 2010). We assume the parties' familiarity  
13 with the underlying facts and procedural history of the case.

14           We have considered both the IJ's and the BIA's opinions.  
15 *Zaman v. Mukasey*, 514 F3d 233, 237 (2d Cir. 2008). The  
16 applicable standards of review are well-established. 8 U.S.C.  
17 § 1252(b)(4)(B); *Aliyev v. Mukasey*, 549 F.3d 111, 115 (2d Cir.  
18 2008).

19           **I.       Withholding of Removal**

20           Withholding of removal is not available to an alien under  
21 either the Immigration and Nationality Act ("INA") or the CAT  
22 where that alien has been convicted of a "particularly serious

1 crime." See 8 U.S.C. § 1231(b)(3)(B)(ii); 8 C.F.R.  
2 § 1208.16(d)(2). Here, the agency concluded that Qureshi was  
3 ineligible for withholding of removal because his conviction  
4 constituted a "particularly serious crime." Under 8 U.S.C.  
5 § 1252(a)(2)(C), we lack jurisdiction to review final orders  
6 of removal against aliens who are removable by reason of  
7 having committed certain criminal offenses, including  
8 aggravated felonies that constitute particularly serious  
9 crimes. See *De La Rosa v. Holder*, 598 F.3d 103, 107 (2d Cir.  
10 2010). The limitation on our review, however, is not  
11 absolute, and we retain jurisdiction to review  
12 "constitutional claims or questions of law," 8 U.S.C.  
13 § 1252(a)(2)(D), which we review *de novo*, see *Pierre v.*  
14 *Holder*, 588 F.3d 767, 772 (2d Cir. 2009).

15 To the extent that Qureshi argues that the agency  
16 improperly applied legal precedent to conclude that his crime  
17 was particularly serious, he raises a question of law over  
18 which we have jurisdiction. 8 U.S.C. § 1252(a)(2)(D). Where,  
19 as in this case, an alien's conviction is not *per se*  
20 particularly serious, the agency generally evaluates on a  
21 case-by-case basis whether an alien's offense constitutes a  
22 "particularly serious crime," using the factors set forth in

1    *In re Frentescu*, 18 I&N Dec. 244 (BIA 1982). These factors  
2    include: (1) the nature of the conviction; (2) the  
3    circumstances and underlying facts of the conviction; (3) the  
4    type of sentence imposed; and (4) whether the type and  
5    circumstances of the crime indicate that the alien will be a  
6    danger to the community. *In re Frentescu*, 18 I&N Dec. at  
7    245-46. However, the agency's approach to evaluating whether  
8    a crime is particularly serious "has evolved since the  
9    issuance of [its] decision in [*In re Frentescu*]," particularly  
10   with respect to the consideration of the type of sentence  
11   imposed, and whether an alien is likely to be a danger to the  
12   community. *In re N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007)  
13   ("[T]he proper focus for determining whether a crime is  
14   particularly serious is on the nature of the crime and not the  
15   likelihood of future serious misconduct."); *id.* at 347  
16   (observing that the Attorney General has concluded that "the  
17   sentence imposed is not a dominant factor in determining  
18   whether a conviction is a particularly serious crime").  
19   Accordingly, neither the sentence imposed nor whether an alien  
20   is likely to be a future danger to the community are necessary  
21   factors in determining whether an alien's conviction was for a  
22   "particularly serious crime."

1           In this case, the agency properly applied the relevant  
2 precedent in concluding that Qureshi had been convicted of a  
3 particularly serious crime. Both the IJ's and the BIA's  
4 decisions discuss the nature of the offense - sexual  
5 intercourse with a 15-year old girl - and the circumstances  
6 and facts underlying the offense - that Qureshi ignored an  
7 order of protection in order to continue seeing the girl, and  
8 that the sexual intercourse occurred after the order of  
9 protection was issued. Because both the IJ and the BIA  
10 engaged in a case-specific analysis of Qureshi's offense, and  
11 because they applied the factors required by the agency's  
12 precedent, the agency committed no error of law in denying  
13 Qureshi's request for withholding of removal under either the  
14 INA or the CAT. *See In re N-A-M-*, 24 I&N Dec. at 342.

15           Qureshi also argues that the IJ and the BIA failed to  
16 consider certain facts and circumstances underlying his  
17 conviction, including that he and the 15-year old girl were in  
18 love, and that he assumed that the order of protection was  
19 premised on the differences in their religions. This argument  
20 is belied by the record, as the IJ explicitly discussed  
21 Qureshi's alleged feelings for the girl and the BIA noted his  
22 religion argument. Accordingly, these arguments, "merely

1 quarrel[] over the correctness of the factual findings or  
2 justification for the discretionary choices" in these  
3 proceedings, *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d  
4 315, 329 (2d Cir. 2006), and, as such, raise neither questions  
5 of law nor constitutional claims.

## 6 **II. Deferral of Removal Under the CAT**

7 Qureshi argues that the agency's denial of his request  
8 for deferral under the CAT is not supported by substantial  
9 evidence in the record.

10 Here, substantial evidence supports the agency's  
11 conclusion that Qureshi failed to demonstrate that it was more  
12 likely than not that he would be tortured if he returned to  
13 Pakistan. Qureshi argues that he will be tortured based on  
14 his father's membership in the Pakistani People's Party.  
15 Nothing in the record, however, supports this contention,  
16 particularly as evidence demonstrates that the Pakistani  
17 People's Party governs Pakistan, and has formed a coalition  
18 with the Muslim League, and that Qureshi testified that he was  
19 never politically active in Pakistan. Further, other than  
20 Qureshi's testimony, which was brief and speculative on this  
21 issue, nothing in the record supports his contention that he  
22 will be tortured because he lived in the United States and

1 will be seen as pro-American, or that his criminal conviction  
2 in this country will lead to torture in Pakistan. Finally,  
3 the record does not support Qureshi's claim that the police  
4 will torture him because they did not conduct an investigation  
5 and because he will continue to seek justice for his father's  
6 murder, as documents in support of his asylum application  
7 demonstrate that the police conducted a year-long  
8 investigation into his father's death. Absent solid support  
9 in the record, Qureshi's claim that he will be tortured in  
10 Pakistan for any of these reasons is too speculative to merit  
11 relief. See *Jian Xing Huang v. INS*, 421 F.3d 125, 129 (2d  
12 Cir. 2005). Because the record does not show that it is more  
13 likely than not that Qureshi will be tortured in Pakistan,  
14 substantial evidence supports the agency's denial of his  
15 application for deferral under the CAT.

16 Finally, Qureshi argues that the BIA erred in failing to  
17 consider evidence of conditions in Pakistan that he submitted  
18 with his appeal. The BIA, however, did not err as it is  
19 prohibited from engaging in any fact finding in deciding  
20 appeals. See 8 C.F.R. § 1003.1(d)(3)(iv). Where a party  
21 asserts that the BIA cannot decide an appeal without further  
22 facts, that party must file a motion to remand, *id.*, which  
23 Qureshi did not do.

1           For the foregoing reasons, the petition for review is  
2 DENIED. As we have completed our review, any stay of removal  
3 that the Court previously granted in this petition is VACATED,  
4 and any pending motion for a stay of removal in this petition  
5 is DISMISSED as moot. Any pending request for oral argument in  
6 this petition is DENIED in accordance with Federal Rule of  
7 Appellate Procedure 34(a)(2), and Second Circuit Local Rule  
8 34(b).

9   FOR THE COURT:  
10    Catherine O'Hagan Wolfe, Clerk  
11  
12